

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KEY TRONIC CORPORATION, a
Washington Corporation,

Plaintiff,

v.

TPG IPB, INC., a foreign corporation,
and ATSI HOLDINGS, INC., a
foreign corporation,

Defendants.

NO. CV-10-195-RHW

**ORDER GRANTING
DEFENDANTS' MOTION FOR
VOLUNTARY DISMISSAL**

Before the Court is Defendants' Motion for Voluntary Dismissal of Count III of Counterclaim against Craig D. Gates (Ct. Rec. 53), heard without oral argument. Defendants seek an order pursuant to Fed. R. Civ. P. 41(a)(2) to dismiss Count III of its counterclaim against Craig D. Gates without prejudice. Plaintiffs have objected to voluntary dismissal and request that the Court: (a) deny the motion outright; (b) dismiss the counterclaims against Craig D. Gates with prejudice; or (c) dismiss those claims without prejudice, but establish a condition requiring that if those claims are litigated, that they be litigated before this Court with any other claims brought by TPG/ATSI against Key Tronic.

Fed. R. Civ. P. 41(a)(2) governs voluntary dismissal where the Defendant has filed an answer and counterclaims. Rule 41(a)(2) specifically provides:

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

**ORDER GRANTING DEFENDANTS' MOTION FOR VOLUNTARY
DISMISSAL * 1**

1 FRCP 41(a)(2). In the Ninth Circuit, “[a] district court should grant a motion for
2 voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will
3 suffer some plain legal prejudice as a result.” *Smith v. Lenches*, 263 F.3d 972, 975
4 (9th Cir. 2001). “Legal prejudice” is defined as “prejudice to some legal interest,
5 some legal claim, some legal argument. Uncertainty because a dispute remains
6 unsolved is not legal prejudice.” *Westlands Water Dist. v. United States*, 100 F.3d
7 94, 97 (9th Cir. 1996)). Moreover, “plain legal prejudice does not result merely
8 because the defendant will be inconvenienced by having to defend in another
9 forum or where a plaintiff would gain a tactical advantage by that dismissal.”
10 *Smith*, 263 F.3d at 976. A district court’s determination concerning voluntary
11 dismissal is reviewed for abuse of discretion. *Id.* at 975.

12
13 The Eighth Circuit has employed a form of balancing test in order to fairly
14 address the equities and circumstances of the parties involved. In *Paulucci v. City*
15 *of Duluth*, the Eighth Circuit held that a district court did not abuse its discretion in
16 denying a motion for voluntary dismissal based on several equitable factors,
17 including expenses, lack of diligence on the part of the moving party, insufficient
18 explanation of the need for dismissal, and the posture of the case. 826 F.2d 780,
19 783 (8th Cir. 1987). In the *Westlands* case, the Ninth Circuit expressly declined to
20 follow the *Paulucci* decision, declaring that the Ninth Circuit cases which analyzed
21 legal prejudice “focus on the rights and defenses available to a defendant in future
22 litigation.” 100 F.3d at 97. *Westlands* stated legal prejudice involved issues such
23 as the loss of a federal forum, or the right to a jury trial, or a statute-of-limitations
24 defense. *Id.*

25 Furthermore, in *Re Sources of Sustainable Development v. Building Industry*
26 *Ass’n of Washington*, the court did not find legal prejudice despite the defendant’s
27 claim that such a result “leaves open the opportunity for further vexatious litigation
28 and harassment.” 2008 WL 3287349, *1 (W.D. Wash. 2008). That court held that

1 assuming that was the case, it did not rise to the level of legal prejudice under
2 *Westlands. Id.* (citing *Westlands*, 100 F.3d at 96-97).

3 Although the Court remains sympathetic to Plaintiff's efforts to save costs
4 and litigate the claims, based on the same facts and circumstances, contracts, and
5 parties involved, on the merits, it lacks the authority to do so. Plaintiff Key Tronic
6 has not shown plain legal prejudice, and therefore the Court finds that it would
7 abuse its discretion to deny the motion. Plaintiff cites to the cost of litigation in two
8 forums concerning the same set of facts. However, "the expense incurred in
9 defending against a lawsuit does not amount to legal prejudice." *Westlands*, 100
10 F.3d at 97 (citing *Hamilton v. Firestone Tire & Rubber Co., Inc.*, 679 F.2d 143,
11 146 (9th Cir. 1982)).

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Defendants' Motion for Voluntary Dismissal of Count III of
14 Counterclaims against Craig D. Gates (Ct. Rec. 53) is **GRANTED**.

15 2. Count III of Defendant TPG's Counterclaim against Craig D. Gates is
16 **dismissed without prejudice**.

17 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
18 Order and to provide copies to counsel.

19 **DATED** this 21st day of December, 2010.
20

21 s/Robert H. Whaley
22 ROBERT H. WHALEY
23 United States District Court

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